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UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

IN RE: Groupon MARKETING AND
 SALES PRACTICES LITIGATION

Case No. 3:11-CV-205-H-(CAB)

**Objection to Class Action Settlement and
 Notice of Intent to Appear at Fairness
 Hearing** on September 7, 2012, on behalf of
 Class Member Andrea Pridham

TO:

Clerk of Court U.S. District Court for the Southern District of California 880 Front Street, Suite 4290 San Diego, CA 92101-8900 Telephone: 619-557-5600	John J. Stoia, Jr. Robbins Gellar Rudman & Dowd LLP 655 West Broadway, Suite 1900 San Diego, CA 92101 Tel: (619) 231-1058 Fax: (619) 231-7423 Class Counsel
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Class Member and Objector Andrea Pridham objects to the settlement of In re Groupon Marketing and Sales Practices Litigation, Case No. 3:11-md-02238-DMS-RBB. Objector intends to appear at the final fairness hearing through counsel. Mrs. Pridham purchased multiple gift certificate from Defendant between November 2008 and December 1, 2011. Objector Pridham will provide her

1 address, telephone number, and personal email address used to purchase thegroupon coupons, and other
2 information upon request by Court or counsel. The personal information requested in the Notice is not
3 appropriate to be included in a publicly filed document. She may be contacted through counsel.

4 Objector Pridham joins in and adopts all other objections made to final approval of this settlement.

5 1. This Settlement Must Be Rejected Because *cy pres* Distribution of Unclaimed Class
6 Funds to Electronic Frontier Foundation and the Center for Democracy and Technology is Improper.

7 This settlement agreement’s plan for the equitable distribution of any unclaimed class funds fails
8 to address any interests or issues implicated in this litigation. In a consumer class action settlement in
9 which all claiming class members have been fully compensated to the maximum extent allowed, *cy pres*
10 distribution of any remaining funds is generally considered to adequately serve the interests of the class
11 under fluid recovery doctrine. *See McDonough v. Toys "R" Us, Inc.*, 834 F. Supp. 2d 329. However,
12 even where *cy pres* distribution is permitted, a particular distribution method must be rejected when it
13 fails to provide the “next best” distribution. *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904
14 F.2d 1301, 1308 (9th Cir. 1990). Where distribution is to a particular non-profit organization, this
15 organization must have at the very least some cognizable connection to the substantive issues underlying
16 the case. *In re Airline Ticket Commn. Antitrust Litig.*, 307 F.3d 679, 683 (8th Cir. 2002). (Distribution
17 to organization unable to claim any previous association to case prohibited by equitable considerations).

18 Neither the Electronic Frontier Foundation nor the Center for Democracy and Technology can
19 claim such connection to this litigation. This case is about the protection of consumer interests. The
20 Electronic Frontier Foundation is a network of lobbyists and researchers operating in the realm of
21 internet privacy, openness, and free speech, which “aim(s) to improve the rights of free expression,
22 security, and privacy on the internet.” *See* <https://www.eff.org/work>. The mission statement of the
23 Electronic Frontier Foundation does not intersect at all with the issues of consumer advocacy implicated
24 in this case. The mere fact that some of the consumer abuses from which this litigation arose might have
25 occurred via the internet does not rise to the level of a nexus between those abuses and the privacy and
26 open source issues addressed by the Electronic Frontier Foundation.

27 Indeed, the only cognizable reason an organization such as Electronic Frontier Foundation would
28 have been selected as a *cy pres* recipient is the close organization-organization relationship it has

1 developed with Defendant's attorneys' law firm, DLA Piper. DLA Piper has worked closely with
2 Electronic Frontier Foundation on lobbying Congress over issues such as SOPA, and has represented it
3 in pursuing internet openness policy goals. See "Can the FBI Monitor Your Web Browsing Without a
4 Warrant?" <https://www.eff.org/press/archives/2005/01/14-0>. Essentially, Defendant's lawyers are
5 attempting to secure a massive payout for a third-party client of theirs, who has absolutely no concrete,
6 theoretical, or even ideological connection to this case. The selection of Electronic Frontier Foundation
7 as *cy pres* recipient is about scoring political points, and has nothing to do with protecting consumers
8 from predatory scams such as the disappearing vouchers at issue here.

9 The Center for Democracy and Technology is apparently an offshoot of Electronic Frontier
10 Foundation. According to wikipedia, "In 1994, the board of the Electronic Frontier Foundation, a
11 digital rights advocacy group, fired its policy director, Jerry Berman for mismanaging the group's
12 organizational and fiscal responsibilities, although no impropriety or malfeasance was alleged. Soon
13 after, Berman formed the Center for Democracy & Technology, assisted by seed donations from AT&T,
14 Bell Atlantic, Nynex, Apple and Microsoft." Center for Democracy and Technology has the same goals
15 as Electronic Frontier Foundation -- free speech and privacy. Center for Democracy and Technology,
16 like Electronic Frontier Foundation, has a strong link to DLA Piper. DLA Piper has sponsored a
17 privacy law fellowship named after a former partner, Ronald Plessner, in conjunction with Center for
18 Democracy and Technology. See andrewraff.com/blog/2005/11/28/privacy-law-and.html.

19 Under *In re Airline Ticket Commn. Antitrust Litig*, the class fund (even that part of the fund
20 which remains unclaimed) is the property of the class. 307 F.3d 679 at 683. This fund must be
21 distributed in a manner which closely benefits the same individuals affected by the predatory behavior at
22 issue in this lawsuit, while serving the goals of the statute under which this litigation arose. See *City of*
23 *Philadelphia v. Am. Oil Co.*, 53 F.R.D. 45, 72 (D.N.J. 1971). Distribution of the fund to an entity which
24 devotes itself to issues of internet open-source information-sharing, and lobbies on behalf of businesses
25 which commit consumer violations as well as individual users, certainly does not serve the interests of
26 class members in this case who have not claimed into the fund.

27 Furthermore, distribution of this fund to an entity with no connection to or standing in this
28 litigation raises serious constitutional due process issues. Essentially, the unchallenged diversion of

1 funds meant for individual consumers to an organization which at best does not ever address the
2 vulnerabilities of those consumers, and at worst lobbies in support of businesses which are directly
3 opposed to consumer interests (and works closely with Defendant's corporate defense firm), represents
4 an unconstitutional seizure and redistribution of monies to which consumers are entitled without due
5 process. *See* Martin H. Redish et al., *Cy Pres Relief and the Pathologies of the Modern Class Action: A*
6 *Normative and Empirical Analysis*, 62 Fla. L. Rev. 617 (2010) (arguing that *cy pres* awards undermine
7 the due process rights of absent class plaintiffs). Indeed, this view has been explicitly endorsed by the
8 9th Circuit. *Nachshin v. AOL, LLC*, 663 F.3d 1034 (9th Cir. 2011). *See also* *Dennis v. Kellogg Co.*,
9 2012 U.S. App. LEXIS 14385, *11 (9th Cir. 2012).

10 On the other hand, groups such as the National Association of Consumer Advocates have worked
11 to hold companies accountable to vulnerable consumers for the sort of behavior underlying this dispute,
12 in precisely the manner intended by statute. The National Association of Consumer Advocates has
13 advocated tirelessly on behalf of consumers, lobbied directly for the passage of legislation protecting
14 consumers from the practices at issue in this case, and has produced comprehensive guidelines for
15 fairness in class action settlements. The National Association of Consumer Advocates' guidelines were
16 drafted to protect consumer interests from collusive settlements and inappropriate settlement provisions,
17 and are operative here, as well. Indeed, on the subject of *cy pres* distributions, the guidelines of the
18 National Association of Consumer Advocates cite commentators who "could not envision any
19 circumstance in which it was appropriate for a defendant to participate in the selection process" of a *cy*
20 *pres* recipient, as has occurred in this case with the selection of the Electronic Frontier Foundation.

21 Furthermore, district courts have recognized that continued legal representation of protected
22 demographics (*i.e.*, consumers in this case) is a desirable mission for a potential *cy pres* recipient to
23 pursue. *See Lessard v. City of Allen Park*, 470 F. Supp. 2d 781 (E.D. Mich. 2007. (Contribution to Bar
24 Association's Access to Justice fund was acceptable because the legal services the fund provided to low
25 income individuals were substantially related to the underlying litigation). Unlike the Electronic
26 Frontier Foundation, whose claim to these funds is brought into question by decisions such as *City of*
27 *Philadelphia v. Am. Oil Co* and *Nachshin v. AOL, LLC*, the mission statement of the National
28 Association of Consumer Advocates corresponds directly with the consumer interests implicated by this

litigation. Unlike the Electronic Frontier Foundation, the National Association of Consumer Advocates does not work closely with large technology companies in order to achieve pro-business legislative goals. Instead, the National Association of Consumer Advocates works directly on behalf of the individual consumers who make up this class, with a focus precisely on combating unfair practices like those at issue here. That the National Association of Consumer Advocates' class action guidelines are relevant to this *cy pres* dispute merely underscores the fact that this organization is a far more appropriate, consumer-friendly destination for these funds; funds which, after all, are meant to benefit wronged consumers, not the political allies of Defendant's counsel.

For the above reason, Objector Andrea Pridham respectfully requests that the settlement agreement not be approved.

Objector Andrea Pridham will appear through counsel Grenville Pridham at the Fairness Hearing presently scheduled for September 7, 2012. Class Member Objector can be reached through counsel.

Respectfully Submitted, this 27th day of July 2012.

For Objector Andrea Pridham

/s/ Grenville Pridham
By Her Attorney Grenville Pridham

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CERTIFICATE OF SERVICE BY ECF

I hereby certify that on July 27, 2012, I caused the foregoing Objection to Class Action Settlement and Notice of Intent to Appear at Fairness Hearing to be served via ECF noticing upon those counsel of record who are registered for electronic filing.

/s/ Grenville Pridham